

Exhibit D

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 10 behalf of all other similarly situated current and former employees of
 Defendants in the State of California

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 JUSTIN OPYRCHAL, individually,
 14 and on behalf of all other similarly
 15 situated current and former employees
 of Defendants in the State of
 California,

16 Plaintiffs,

17 v.

18 NEW YORK LIFE INSURANCE
 19 COMPANY, INC., a New York
 corporation; NEW YORK LIFE
 20 INSURANCE AND ANNUITY
 CORPORATION, INC., a Delaware
 21 corporation; and DOES 1 through 100
 inclusive,

22 Defendants.
 23

Case No. CV 07-518-VBF (VBKx)
 CLASS ACTION

Hon. Valerie Baker Fairbank

Action Removed: January 23, 2007

**PLAINTIFFS' FIRST AMENDED
 CLASS ACTION COMPLAINT**

Demand for Jury Trial

24 Named Plaintiff JUSTIN OPYRCHAL, individually, and on behalf of all other
 25 similarly situated current and former employees of Defendants in the State of
 26 California (hereinafter, collectively referred to as "Plaintiffs"), allege as follows:

27 **I. JURISDICTIONAL AND VENUE ALLEGATIONS**

28 I. Plaintiffs are informed and believe, and thereon allege that Defendant



1 NEW YORK LIFE INSURANCE COMPANY, INC., is, and at all times relevant
2 hereto was, a corporation organized and existing under and by virtue of the laws of
3 the State of New York, with its headquarters and/or principal place of business in
4 New York, New York. Plaintiffs are further informed and believe, and thereon
5 allege that Defendant NEW YORK LIFE INSURANCE COMPANY, INC., is, and
6 at all times relevant hereto was, a foreign corporation qualified to transact and
7 conduct business in the State of California, and that at all times relevant hereto
8 did, and still does, transact and conduct business throughout the State of
9 California, including but not limited to the County of Los Angeles, where Named
10 Plaintiff OPYRCHAL performed work for Defendants. Plaintiffs are further
11 informed and believe, and thereon allege that Defendant NEW YORK LIFE
12 INSURANCE COMPANY, INC., does, and at all times relevant hereto has, sold
13 insurance policies to consumers throughout the State of California and operated
14 offices within the State of California where Plaintiffs have worked. Defendant
15 NEW YORK LIFE INSURANCE COMPANY, INC., is thus alleged to be one of
16 Plaintiffs' "employers" as it relates to the claims in this lawsuit.

17 2. Plaintiffs are informed and believe, and thereon allege that Defendant
18 NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., is,
19 and at all times relevant hereto was, a corporation organized and existing under
20 and by virtue of the laws of the State of Delaware, with its headquarters and/or
21 principle place of business in Dallas, Texas. Plaintiffs are further informed and
22 believe, and thereon allege that Defendant NEW YORK LIFE INSURANCE
23 AND ANNUITY CORPORATION, INC., is, and at all times relevant hereto was,
24 a foreign corporation qualified to transact and conduct business in the State of
25 California, and that at all times relevant hereto did, and still does, transact and
26 conduct business throughout the State of California, including but not limited to
27 the County of San Diego. Plaintiffs are further informed and believe, and thereon
28 allege that Defendant NEW YORK LIFE INSURANCE AND ANNUITY

1 CORPORATION, INC., does, and at all times relevant hereto has, sold insurance
2 policies to consumers throughout the State of California and operated offices
3 within the State of California where Plaintiffs have worked. Defendant NEW
4 YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., is thus
5 alleged to be one of Plaintiffs' "employers" as it relates to the claims in this
6 lawsuit.

7 3. Therefore, Plaintiffs are informed and believe, and thereon allege that
8 Defendants NEW YORK LIFE INSURANCE COMPANY, INC., and NEW
9 YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., and DOES
10 1-100 (hereinafter, collectively referred to as "Defendants") are each subject to the
11 jurisdiction of the State of California, and specifically may be sued on the causes
12 of action herein in the County of Los Angeles. Plaintiffs are further informed and
13 believe, and thereon allege that this Court is the proper Court, and this action is
14 properly filed in the County of Los Angeles, because: for part or all of the "Class
15 Period" that Plaintiffs will seek certification of in this case, some or all of
16 Defendants' and/or DOES 1 through 100's obligations and liabilities to Plaintiffs
17 arose in the State of California, and within the County of Los Angeles; for part or
18 all of the Class Period that Plaintiffs will seek certification of in this case,
19 Defendants and/or DOES 1 through 100 maintained offices and transacted
20 business in the State of California, and within the County of Los Angeles; and for
21 part or all of the Class Period that Plaintiffs will seek certification of in this case,
22 work was performed by Plaintiffs and made the subject of this action in the State
23 of California, and within the County of Los Angeles.

24 II. FACTUAL ALLEGATIONS

25 4. Plaintiffs hereby reallege, and incorporate by reference in this Section
26 as though set forth fully herein, the allegations contained in Paragraphs 1 through
27 3, above.

28 5. Plaintiffs bring this employment Class Action against Defendants to

1 recover for their wage claims, including: unpaid wages and wage benefits;
2 violations of minimum wage, unreimbursed business expenses; statutory penalties;
3 waiting time penalties; restitution related to Defendants' unlawful and unfair
4 business practices arising from the Plaintiffs' wage and business expense claims;
5 interest, attorneys' fees, costs and expenses; and nominal and compensatory
6 damages. Plaintiffs reserve the right to name additional potential Class
7 Representatives.

8 6. Plaintiffs are informed and believe, and thereon allege that
9 Defendants' primary business activity in the State of California is as an insurance
10 company selling insurance policies and financial products to consumers using
11 Plaintiffs, employed as agents, through offices in the State of California.
12 Principally, Defendants market and sell insurance policies to their customers and
13 through agents. Therefore, for Plaintiffs' wage and expense reimbursement claims
14 as alleged herein, Defendants are obligated to comply with certain portions of the
15 California Industrial Welfare Commission Wage Order No. 4-2001, originally and
16 as amended. Further, for Plaintiffs' wage claims and expense reimbursement
17 claims as alleged herein, Defendants are obligated to comply with applicable
18 provisions of the California Labor Code.

19 7. Plaintiffs are informed and believe, and thereon allege that Named
20 Plaintiff JUSTIN OPYRCHAL was employed by Defendants in the State of
21 California within the four (4) years before the filing of this Complaint as an
22 "Agent" for Defendants. Plaintiffs generally are current and former employees of
23 Defendants throughout the State of California, who have been employed by
24 Defendants in the State of California within the four (4) years before the filing of
25 this Complaint – and continuing to trial or until an appropriate ending date for a
26 Class Period – as Agents for Defendants (and/or in similar positions and/or with
27 similar job titles, duties, and responsibilities) working under a "TSA Plan
28 Agreement" which defines them as employees of Defendants.

1 8. Plaintiffs are informed and believe, and thereon allege that as Agents
2 for Defendants (and/or in similar positions and/or with similar job titles, duties,
3 and responsibilities), Plaintiffs do work and have worked for Defendants
4 throughout the State of California within the four (4) years before the filing of this
5 Complaint, to conduct and transact Defendants' insurance and financial products
6 business. Specifically, Agents act as salespersons to Defendants' customers and
7 potential customers. Agents are based out of one of Defendants' offices in cities
8 throughout California. The job requirements of all Agents are the same or
9 substantially similar, and they are principally to sell Defendant's insurance
10 policies or other financial products. Named Plaintiff JUSTIN OPYRCHAL was
11 employed by Defendants in the State of California within the four (4) years before
12 the filing of this Complaint as an Agent for Defendants.

13 9. Plaintiffs are informed and believe, and thereon allege that all Agents
14 are typically required to attend a mandatory three-month training class at the
15 beginning of their employment, in which they attend class for eight hours per day,
16 three days per week. After the initial three month training period, Plaintiffs are
17 required to attend training for eight hours per day, two days per week. While the
18 Agents are engaged in and attending such orientation training classes, Agents are
19 not engaged in any activities directly related to marketing or selling policies or
20 products to Defendants' customers; such training classes are, however, intended to
21 educate and train Agents how to act as salespeople to sell the products and policies
22 marketed by Defendants. Plaintiffs end up without any payment for the time spent
23 in training classes, and/or with payment less than the legal minimum wage.

24 10. Plaintiffs are informed and believe, and thereon allege that during the
25 first three years of performing work for Defendants, Agents are employed
26 pursuant to a written contract, the TSA Plan Agreement, which declares that
27 Plaintiffs are employees of Defendants, and that they must devote their "entire
28 time to the business of this employment."

11. Plaintiffs are informed and believe, and thereon allege that during their course of the first three years of their employment with Defendants, Agents are unlawfully not paid all earned wages as required by California law, are not provided itemized paychecks as required by California law, are not guaranteed payment of minimum wage as required by California law, and are not reimbursed for business expenses as required by California law and/or are improperly charged for business expenses in contravention of California law. Therefore, Plaintiffs have been, for a period of time within the four (4) years before the filing of this Complaint, improperly deprived of wages and benefits of employment as described herein.

12. Plaintiffs are informed and believe, and thereon allege, that at all relevant times herein, DOES 1 - 50, are individuals who are/were citizens and residents of the State of California. Plaintiffs are further informed and believe, and thereon allege, that at all relevant times herein DOES 1 - 50 owned, controlled, and/or managed the corporate affairs of Defendants and other of the DOE Defendant business entities, and/or directly or indirectly exercised operational control over the wages, hours, and working conditions of Plaintiffs, and/or engaged in fraudulent and/or tortious activity to the detriment of Plaintiffs. As such, DOES 1 - 50 are "employers" as a matter of law for purposes of imposing personal liability for the Labor Code violations alleged herein, pursuant to California wage and hour laws.

13. Plaintiffs are informed and believe, and thereon allege that Defendants DOES 1 - 100 are, and at all times relevant hereto were, persons, corporations or other business entities, and are/were qualified to transact and conduct business in the State of California, and did and do transact and conduct business in the State of California, and are thus subject to the jurisdiction of the State of California. Specifically, DOES 1 - 100 maintain offices, operate businesses, employ persons, conduct business in, and illegally pay employees by

1 illegal payroll practices and policies described herein, throughout the State of
2 California.

3 14. Plaintiffs are informed and believe, and thereon allege that at all
4 relevant times herein DOES 1 - 100 are/were the officers, owners, executives,
5 directors, partners, or shareholders of Defendants and of one another, who were
6 acting on behalf of Defendants and each other in the establishment of, ratification
7 of, and/or execution of the illegal payroll practices and policies described herein.
8 Plaintiffs are further informed and believe, and thereon allege that at all times
9 relevant hereto DOES 1 - 100 have held ownership, officer, director and/or
10 executive positions with Defendants and with one another, which included
11 decision-making responsibility for, and establishment and execution of, illegal
12 payroll practices and policies for Defendants and each other, and Defendants and
13 DOES 1 - 100 are, therefore, liable on the causes of action alleged herein pursuant
14 to California wage and hour laws. Plaintiffs are further informed and believe and
15 thereon allege that Defendants and DOES 1 - 100 are Plaintiffs' joint employers
16 by virtue of a joint enterprise; Plaintiffs perform, and have performed, services for
17 each and every of Defendants, and to the mutual benefit of all Defendants, and all
18 Defendants share control of Plaintiffs as employees, either directly or indirectly,
19 and the manner in which Defendants' business is conducted.

20 15. Plaintiffs are informed and believe and thereon allege that there exists
21 such a unity of interest and ownership between and among all Defendants that the
22 individuality and separateness of those Defendants have ceased to exist. The
23 business affairs of Defendants are, and at all times relevant hereto were, so mixed
24 and intermingled that the same cannot reasonably be segregated, and the same are
25 in inextricable confusion. Defendants are, and at all times relevant hereto were,
26 used by DOES 1 - 100 as a mere shell and conduit for the conduct of certain of
27 Defendants' affairs. The recognition of the separate existence of Defendants
28 would not promote justice, in that it would permit Defendants to insulate

1 themselves from liability to Plaintiffs. Accordingly, Defendants and DOES 1 -
2 100 constitute the alter egos of each other, and the fiction of their separate
3 existence must be disregarded at law and in equity, because such disregard is
4 necessary to avoid fraud and injustice to Plaintiffs herein.

5 16. Plaintiffs are informed and believe and thereon allege (unless
6 otherwise alleged in this Complaint), that at all relevant times herein, Defendants
7 and DOES 1 - 100 were the agents, employees and/or servants, masters or
8 employers of each other and of the remaining DOES 1 - 100, and in doing the
9 things herein alleged, were acting within the course and scope of such agency or
10 employment, and with the approval and ratification of each of the other
11 Defendants.

12 17. Plaintiffs are informed and believe and thereon allege that each and
13 every one of the acts and omissions alleged herein were performed by, and/or
14 attributable to, all Defendants, each acting as agents and/or employees, and/or
15 under the direction and control of each of the other Defendants, and that said acts
16 and failures to act were within the course and scope of said agency, employment
17 and/or direction and control, and were committed willfully, maliciously,
18 oppressively, and fraudulently.

19 18. The true names and capacities, whether individual, corporate,
20 associate, or otherwise, of DOES 1 - 100, inclusive, are unknown to Plaintiffs,
21 who therefore sue the DOE Defendants by fictitious names. Plaintiffs will amend
22 this Complaint to show their true names and capacities when they have been
23 ascertained.

24 19. At all relevant times alleged herein Plaintiffs were employed by
25 Defendants under a written employment agreement, the TSA Plan Agreement. In
26 perpetrating the acts and omissions alleged herein, Defendants, and each of them,
27 acted pursuant to and in furtherance of a policy and practice of not paying
28 Plaintiffs wages owed for certain work performed, of not reimbursing Plaintiffs'

1 business expenses and/or improperly charging Plaintiffs for business expenses, of
2 not providing Plaintiffs with properly itemized wage statements, and of failing to
3 pay Plaintiffs all wages owed at the time of termination, all in violation of certain
4 provisions of the California Industrial Welfare Commission Wage Order No.4-
5 2001, originally and as amended, and certain provisions of the California Labor
6 Code, as described herein, and in violation of the California Business and
7 Professions Code, sections 17200, *et. seq.*

8 20. As a direct and proximate result of the unlawful actions of
9 Defendants, Plaintiffs have suffered and continue to suffer from loss of wages,
10 expenses, and earnings in amounts as yet unascertained, but subject to proof at
11 trial.

12 III. CLASS ACTION ALLEGATIONS

13 21. Plaintiffs hereby reallege, and incorporate by reference in this Section
14 as though set forth fully herein, the allegations contained in Paragraphs 1 through
15 20, above.

16 22. This action is appropriately suited for a Class Action because:

17 a. The potential class is a significant number because
18 Plaintiffs are informed and believe, and thereon allege, that
19 within the past four (4) years Defendants employed, at any one
20 time, hundreds of Agents throughout the State of California,
21 believed to be well in excess of five hundred (500) employees.
22 There also are numerous former employees who were subjected
23 to the same or similar illegal payroll practices and policies.
24 Joinder of all current and former employees individually would
25 be impractical;

26 b. This action involves common questions of law and fact
27 to the potential class because the action focuses on the
28 Defendants' systematic course of illegal payroll practices and

1 policies throughout the State of California, which was applied
2 to all Agents and others similarly situated in violation of the
3 California Industrial Welfare Commission Wage Order No. 4-
4 2001, originally and as amended, the California Labor Code,
5 and the California Business and Professions Code (which
6 prohibits unfair and unlawful business practices arising from
7 such violations).

8 c. The claims of the Named Plaintiff (and as yet other
9 unnamed Class Representatives) are typical of the class
10 because Defendants subjected all of their Agents to similar
11 and/or identical violations of the California Industrial Welfare
12 Commission Wage Order No. 4-2001, originally and as
13 amended, the California Labor Code, and the California
14 Business and Professions Code (which prohibits unfair and
15 unlawful business practices arising from such violations), and
16 because all members of the class were employed pursuant to
17 the same (or similar) TSA Plan Agreement.

18 d. The Named Plaintiff (and as yet other unnamed Class
19 Representatives) is able to fairly and adequately protect the
20 interests of all members of the class because it is in their best
21 interests to prosecute the claims alleged herein to obtain full
22 compensation due to them for all services rendered and hours
23 worked.

24 23. This suit seeks only recovery for economic injury on behalf of all
25 Class Members and it expressly is not intended to request any recovery for
26 personal injury and claims related thereto. Plaintiffs reserve the right to expand
27 the Class definitions, and add Subclass definitions as necessary, to seek recovery
28 on behalf of additional persons as warranted as facts are learned in further

1 investigation and discovery.

2 24. The joinder of the Class Members is impractical and the disposition
3 of their claims in the class action will provide substantial benefits both to the
4 parties and to the court. The Class Members can be easily identified through
5 Defendants' records.

6 25. Plaintiff Opyrchal will fairly and adequately represent and protect the
7 interests of the Class in that he has no interests antagonistic to the Class.
8 Plaintiffs have retained counsel competent and experienced in the prosecution of
9 class action litigation.

10 26. Plaintiffs and the members of the Class have all suffered irreparable
11 harm as a result of the defendants' unlawful and wrongful conduct. Absent a class
12 action, the Class and Subclass members will continue to suffer losses and the
13 potential for irreparable harm. In addition, these violations of law will be allowed
14 to proceed without remedy and the Defendants will likely retain the substantial
15 sums received as a result of their wrongdoing. Because of the size of the
16 individual Class Members' claims, few, if any, Class Members could afford to seek
17 legal redress for the wrongs complained of herein.

18 **IV. PLAINTIFFS' CAUSES OF ACTION**

19 27. Plaintiffs hereby reallege, and incorporate by reference in this Section
20 as though set forth fully herein, the allegations contained in Paragraphs 1 through
21 26, above.

22 **FIRST CAUSE OF ACTION (COUNT ONE):**

23 **FAILURE TO PAY MINIMUM WAGE,**

24 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**

25 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

26 **(By All Plaintiffs, Against All Defendants)**

27 28. Plaintiffs hereby reallege, and incorporate by reference in this Cause
28 of Action as though set forth fully herein, the allegations contained in Paragraphs

1 1 through 27, above. This cause of action is plead by all Plaintiffs, against all
2 Defendants.

3 29. Within the three (3) years before the filing of this Complaint,
4 Defendants have employed Plaintiffs as Agents (and/or in similar positions and/or
5 with similar job titles, duties, and responsibilities) throughout the State of
6 California, to conduct and transact Defendants' insurance and financial products
7 business. Defendants have unlawfully denied Plaintiffs wages and other benefits
8 of employment, when as a matter of fact and law, Plaintiffs are Defendants'
9 "employees" pursuant to contract. As a result, Plaintiffs are, and have been,
10 entitled to the protections of the California Industrial Welfare Commission Wage
11 Order No. 4-2001, originally and as amended, and the California Labor Code, with
12 regard to the payment of minimum wages for hours worked during each Plaintiffs'
13 mandatory training period at the beginning of their employment, for that period of
14 time that they were required to be in class three (3) days per week. Classes during
15 these training periods are intended to educate and train Agents on how to act as
16 salespeople to sell the insurance policies and financial products marketed by
17 Defendants; however, during such training classes, Agents are not engaged in any
18 sales activities directly related to marketing or selling products and service to
19 Defendants' customers. Plaintiffs end up without any payment for the time spent
20 in training classes, and/or with payment less than the legal minimum wage.

21 30. The benefits and protections of the California Industrial Welfare
22 Commission Wage Order No. 4-2001, originally and as amended, and the
23 California Labor Code, with regard to the payment of minimum wages for hours
24 worked during each Plaintiffs' mandatory training period at the beginning of their
25 employment (for the period that they are required to be in class three (3) days per
26 week), provide that for the three (3) years preceding the filing of this action,
27 Plaintiffs should have been paid minimum wages for all such hours worked,
28 because as employees during such mandatory training periods they were not and

1 are not subject to the exclusion of Labor Code section 1171 as outside
2 salespersons.

3 31. In addition, Defendants have not paid Plaintiffs the minimum wage
4 for all hours worked during the period that they were in training for three (3) days
5 per week. In violation of state law, Defendants have refused to perform their
6 obligations to properly compensate Plaintiffs at the minimum wage for such hours
7 worked. As a direct and proximate result, Plaintiffs have suffered, and continue to
8 suffer, substantial losses related to the use and enjoyment of such monies, lost
9 interest on such wages, and expenses and attorneys' fees in seeking to compel
10 Defendants to fully perform their obligation under state law, all to their respective
11 damage in amounts according to proof at time of trial. As Defendants' conduct
12 described herein violates the provisions of the California Industrial Welfare
13 Commission Wage Order No. 4-2001, originally and as amended, and the
14 California Labor Code regarding the payment of minimum wages to employees,
15 Plaintiffs are thus entitled to recover all amounts for all such hours worked,
16 penalties pursuant to Labor Code section 203, liquidated damages, interest,
17 attorneys' fees, and court costs and expenses of suit, pursuant to Labor Code
18 sections 1194 and 1194.2, according to proof at time of trial. Plaintiffs are also
19 entitled to recover, in addition to or in lieu of some or all such wages and benefits,
20 nominal, actual and compensatory damages in amounts according to proof at time
21 of trial.

22 32. WHEREFORE, Plaintiffs request relief as herein provided.

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1 **SECOND CAUSE OF ACTION (COUNT TWO):**
2 **FAILURE TO INDEMNIFY AND REIMBURSE**
3 **FOR BUSINESS EXPENSES,**
4 **AND UNLAWFUL DEDUCTIONS FROM WAGES,**
5 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**
6 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**
7 **(By All Plaintiffs, Against All Defendants)**

8 33. Plaintiffs hereby reallege, and incorporate by reference in this Cause
9 of Action as though set forth fully herein, the allegations contained in Paragraphs
10 1 through 32, above. This cause of action is plead by all Plaintiffs, against all
11 Defendants.

12 34. Within the three (3) years before the filing of this Complaint,
13 Defendants have employed Plaintiffs as Agents (and/or in similar positions and/or
14 with similar job titles, duties, and responsibilities), pursuant to the TSA Plan
15 Agreement, throughout the State of California, to conduct and transact
16 Defendants' insurance and financial products business. Defendants have
17 unlawfully denied Plaintiffs wages and other benefits of employment, when as a
18 matter of fact and law, Agents are Defendants' employees pursuant to contract. As
19 a result, Plaintiffs are and have been entitled to the protections of the California
20 Labor Code, including but not limited to sections 2802, et al., with regard to
21 indemnification for expenditures and losses in discharge of their duties for
22 Defendants. Furthermore, Defendants were not permitted to make deductions or
23 set-offs from Plaintiffs' earned wages for items including but not limited to
24 expenses incurred in the performance of their duties, accidents, and/or damages
25 caused while discharging their duties. Pursuant to California Labor Code section
26 2804, Defendants cannot ask or require Plaintiffs to waive the benefits of
27 California Labor Code section 2802. The benefits and protections of such statutes
28 extend to Plaintiffs, even if they were and are otherwise subject to the exclusion of

1 Labor Code section 1171 as outside salespersons.

2 35. Within the three (3) years before the filing of this Complaint, as
3 Agents (and/or in similar positions and/or with similar job titles, duties, and
4 responsibilities) employed pursuant to the TSA Plan Agreement throughout the
5 State of California, Plaintiffs have been required to, among other items: pay
6 monthly rent on a cubicle in Defendants' offices; pay monthly telephone service
7 charges for a phone line run into their cubicle; pay copy charge fees; and pay for
8 required, specialized software and technical support for that software as a monthly
9 charge. Defendants have also charged Plaintiffs a "commission administration fee"
10 for each policy on which Defendants paid Plaintiffs a commission. These unlawful
11 deductions and/or charges violate California Labor Code §§ 221, 223, 451 and/or
12 2802.

13 36. In violation of state law, Defendants have refused to perform their
14 obligations to properly indemnify and reimburse Plaintiffs for such items, and
15 avoid making deductions or set-offs from Plaintiffs' earned wages. As a direct and
16 proximate result, Plaintiffs have suffered, and continue to suffer, substantial losses
17 related to the use and enjoyment of such monies, lost interest on such wages, and
18 expenses and attorneys' fees in seeking to compel Defendants to fully perform
19 their obligation under state law, all to their respective damage in amounts
20 according to proof at time of trial. As Defendants' conduct described herein
21 violates the provisions of the California Labor Code regarding indemnification,
22 reimbursement, and unlawful deductions from wages, Plaintiffs are thus entitled to
23 recover all amounts for all such expenses, penalties pursuant to Labor Code
24 section 203, interest, attorneys' fees, and court costs and expenses of suit, pursuant
25 to Labor Code sections 218.6 and 2802, according to proof at time of trial.
26 Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such
27 expenses and benefits, nominal, actual and compensatory damages in amounts
28 according to proof at time of trial.

1 37. WHEREFORE, Plaintiffs request relief as herein provided.

2 **THIRD CAUSE OF ACTION (COUNT THREE):**

3 **FAILURE TO PROVIDE PROPERLY ITEMIZED WAGE STATEMENTS,**

4 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**

5 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

6 **(By All Plaintiffs, Against All Defendants)**

7 38. Plaintiffs hereby reallege, and incorporate by reference in this Cause
8 of Action as though set forth fully herein, the allegations contained in Paragraphs
9 1 through 37, above. This cause of action is plead by all Plaintiffs, against all
10 Defendants.

11 39. Within the three (3) years before the filing of this Complaint,
12 Defendants have employed Plaintiffs as Agents (and/or in similar positions and/or
13 with similar job titles, duties, and responsibilities) throughout the State of
14 California, to conduct and transact Defendants' insurance and financial products
15 business. Defendants have unlawfully denied Plaintiffs wages and other benefits
16 of employment, when as a matter of fact and law, Agents are Defendants'
17 "employees" pursuant to contract. As a result, Plaintiffs are, and remain, entitled
18 to the protections of the California Industrial Welfare Commission Wage Order
19 No. 4-2001, originally and as amended, and the California Labor Code, with
20 regard to the requirements that Defendants provide Plaintiffs with correctly
21 itemized wage statements at each pay period, but in no event fewer than twice
22 monthly, including proper payment of wages and expenses, and proper itemization
23 of employees' pay, and withholding of deductions authorized in writing by
24 employees, among other items.

25 40. In violation of state law, Defendants have refused to perform their
26 obligations to provide Plaintiffs with properly itemized wage statements, including
27 proper payment of wages and expenses, and proper itemization of employees' pay,
28 and of deductions authorized in writing by employees.

41. As a direct and proximate result of Defendants' failure to provide Plaintiffs with properly itemized wage statements, Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, monies, and wage statements and wage benefits, lost interest on wages and expenses and benefits, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at time of trial. Plaintiffs are thus entitled to recover all amounts for all such wages and expenses and benefits on such wage statements, penalties, interest, attorneys' fees, and court costs and expenses of suit, pursuant to Labor Code sections 218.6 and 226, according to proof at time of trial. Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such wages and expenses and benefits, nominal, actual and compensatory damages in amounts according to proof at time of trial.

42. WHEREFORE, Plaintiffs request relief as herein provided.

FOURTH CAUSE OF ACTION (COUNT FOUR):

**WAGES UNLAWFULLY WITHHELD AT TERMINATION,
UNDER THE LAWS OF THE STATE OF CALIFORNIA,
BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA
(By All Plaintiffs, Against All Defendants)**

43. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as though set forth fully herein, the allegations contained in Paragraphs 1 through 42, above. This cause of action is plead by all Plaintiffs, against all Defendants.

44. Within the three (3) years before the filing of this Complaint, Defendants have employed Plaintiffs as Agents (and/or in similar positions and/or with similar job titles, duties, and responsibilities) pursuant to the TSA Plan Agreement, throughout the State of California, to conduct and transact Defendants' insurance and financial products business. Defendants have

1 unlawfully denied Plaintiffs wages and other benefits of employment, when as a
2 matter of fact and law, Agents are Defendants' employees pursuant to contract. As
3 a result, Plaintiffs are and have been entitled to the protections of the California
4 Labor Code, with regard to the requirements that Defendants provide Plaintiffs
5 with all earned wages as of the date of each former-employee-Plaintiffs'
6 termination of employment with Defendants.

7 45. In violation of state law, Defendants have refused to perform their
8 obligations to provide former-employee-Plaintiffs with all earned wages as of the
9 date of each former-employee-Plaintiffs' termination of employment with
10 Defendants. As a direct and proximate result, Plaintiffs have suffered, and
11 continue to suffer, substantial losses related to the use and enjoyment of such
12 compensation, all to their respective damage in amounts according to proof at time
13 of trial. As Defendants' conduct described herein violates the provisions of the
14 California Labor Code regarding proper payment of all earned wages as of the
15 date of each former-employee-Plaintiffs' termination of employment with
16 Defendants, Plaintiffs are thus entitled to recover all amounts for all such
17 compensation plus waiting time penalties pursuant to Labor Code sections 200 -
18 203, according to proof at time of trial. Plaintiffs are also entitled to recover, in
19 addition to or in lieu of some or all such compensation and benefits, nominal,
20 actual and compensatory damages in amounts according to proof at time of trial.

21 46. WHEREFORE, Plaintiffs request relief as herein provided.

22 **FIFTH CAUSE OF ACTION (COUNT FIVE):**

23 **VIOLATION OF CALIFORNIA LABOR CODE**

24 **SECTIONS 221, 450 AND 2802**

25 **(By All Plaintiffs, Against All Defendants)**

26 47. Plaintiffs hereby reallege, and incorporate by reference in this Cause
27 of Action as though set forth fully herein, the allegations contained in paragraphs
28 1 through 46, above. This cause of action is plead by all Plaintiffs, against all

1 Defendants.

2 48. Within the preceding three (3) years, Defendants maintained a scheme
3 by which Plaintiffs have been required to pay Defendants for, among other items:
4 pay monthly rent on a cubicle in Defendants' offices; pay monthly telephone
5 service charges for a phone line run into their cubicle; pay copy charge fees; and
6 pay for required, specialized software and technical support for that software as a
7 monthly charge. Defendants have also charged Plaintiffs a "commission
8 administration fee" for each policy on which Defendants paid Plaintiffs' a
9 commission. Further, upon the end of an Agent's employment with Defendants,
10 Defendants demanded immediate payment of any of these business expenses
11 and/or fees assessed against the Agent by Defendants and remaining unpaid at the
12 end of employment, and threatened the Agent with collections action if the Agent
13 failed to make immediate payment. This Cause of Action seeks recovery of such
14 sums paid by Agents (and/or others in similar positions and/or with similar job
15 titles, duties, and responsibilities) after the end of their employment and in
16 response to such threats of collections activity made by Defendants.

17 49. At all times relevant, California Labor Code sections 221, 450 and
18 2802 were in effect and prohibited Defendants' collection of wages previously
19 paid to employees and/or coercing employees to patronize Defendants by paying
20 rent for cubicles, charges for telephone service, and surcharges for copying,
21 among others. Further, Defendants' attempts to collect these sums from Agents
22 after the end of employment constitutes a further violation of these sections.

23 50. WHEREFORE, Plaintiffs request relief as herein provided.

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SIXTH CAUSE OF ACTION (COUNT SIX):
UNFAIR BUSINESS PRACTICES IN VIOLATION OF
CALIFORNIA BUSINESS AND PROFESSIONS CODE
SECTIONS 17200, ET. SEQ.,
BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA
(By All Plaintiffs, Against All Defendants)

51. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as though set forth fully herein, the allegations contained in Paragraphs 1 through 50, above. This cause of action is plead by all Plaintiffs, against all Defendants.

52. Defendants engage in business practices, offer their insurance policies and financial products for sale, and advertise their goods and services within the jurisdiction of the State of California. As such, Defendants have a duty to comply with the provisions of the Unfair Business Practices Act as set forth in California Business & Professions Code sections 17200, *et seq.*, which Act prohibits, *inter alia*, unlawful, unfair, and/or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising by any person, firm, corporation, or association within the jurisdiction of the State of California.

53. By violating the foregoing provisions of California's labor and employment laws, and by failing to take immediate and appropriate measures to address these violations, Defendants' acts constitute unfair business practices under Business and Professions Code sections 17200, *et. seq.* Defendants' violations of California's labor and employment laws constitute a business practice because they have been done repeatedly over a significant period of time throughout the State of California, and in a systematic manner to the detriment of many Plaintiffs.

54. As a direct, foreseeable, and proximate result of Defendants' acts and omissions alleged herein, for the four (4) years preceding the filing of this action

1 Plaintiffs, including Plaintiff Opyrchal, have lost money and suffered injuries, and
2 Defendants have also been unjustly enriched as a result of unfair competition.
3 Plaintiffs therefore request restitution of all monies paid to Defendants by the
4 Plaintiffs pursuant to the illegal acts alleged herein, all in an amount according to
5 proof at time of trial, in lieu of or in addition to other types of relief requested
6 herein.

7 55. WHEREFORE, Plaintiffs request relief as herein provided.

8 **SEVENTH CAUSE OF ACTION (COUNT SEVEN):**
9 **UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF**
10 **CALIFORNIA BUSINESS AND PROFESSIONS CODE**
11 **SECTIONS 17200, ET. SEQ.,**
12 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**
13 **(By All Plaintiffs, Against All Defendants)**

14 56. Plaintiffs hereby reallege, and incorporate by reference in this Cause
15 of Action as though set forth fully herein, the allegations contained in Paragraphs
16 1 through 55, above. This cause of action is plead by all Plaintiffs, against all
17 Defendants.

18 57. Defendants engage in business practices, offer their insurance
19 policies and financial products for sale, and advertise their goods and services
20 within the jurisdiction of the State of California. As such, Defendants have a duty
21 to comply with the provisions of the Unfair Business Practices Act as set forth in
22 California Business & Professions Code sections 17200, *et seq.*, which Act
23 prohibits, *inter alia*, unlawful, unfair, and/or fraudulent business acts or practices
24 and unfair, deceptive, untrue, or misleading advertising by any person, firm,
25 corporation, or association within the jurisdiction of the State of California.

26 58. By violating the foregoing provisions of California's labor and
27 employment laws, and by failing to take immediate and appropriate measures to
28 address these violations, Defendants' acts constitute unlawful business practices

1 under Business and Professions Code sections 17200, *et. seq.* Defendants'
2 violations of California's labor and employment laws constitutes a business
3 practice because they have been done repeatedly over a significant period of time
4 throughout the State of California, and in a systematic manner to the detriment of
5 scores of Plaintiffs.

6 59. As a direct, foreseeable, and proximate result of Defendants' acts and
7 omissions alleged herein, for the four (4) years preceding the filing of this action
8 Plaintiffs, including Plaintiff Opyrchal, have lost money and suffered injuries, and
9 Defendants have also been unjustly enriched as a result of unfair competition.
10 Plaintiffs therefore request restitution of all monies paid to Defendants by the
11 Plaintiffs pursuant to the illegal acts alleged herein, all in an amount according to
12 proof at time of trial, in lieu of or in addition to other types of relief requested
13 herein.

14 60. WHEREFORE, Plaintiffs request relief as herein provided.

15 **V. PRAYER FOR RELIEF**

16 61. Plaintiffs hereby reallege, and incorporate by reference in this Section
17 as though set forth fully herein, the allegations contained in Paragraphs 1 through
18 60, above.

19 WHEREFORE, Plaintiffs pray for judgment as follows:

- 20 1. For nominal damages;
- 21 2. For actual damages;
- 22 3. For compensatory damages;
- 23 4. For restitution of all monies, wages, expenses and benefits due to
24 Plaintiffs;
- 25 5. For interest accrued to date;
- 26 6. For interest pursuant to Labor Code section 218.6, 1194, and 1194.2;
- 27 7. For penalties pursuant to Labor Code sections 203 and 226;
- 28 8. For liquidated damages pursuant to Labor Code section 1194.2;

1 10. For costs of suit and expenses incurred herein pursuant to Labor Code
2 sections 226, 1194, and 2802;

3 11. For reasonable attorneys' fees pursuant to Labor Code sections 226,
4 1194, and 2802, and C.C.P. section 1021.5;

5 12. For appropriate equitable relief;

6 13. For appropriate declaratory relief;

7 14. For all such other and further relief that the Court may deem just and
8 proper.

9
10 Dated: 5/9/07

POPE, BERGER & WILLIAMS, LLP,
LAW OFFICES OF DOUGLAS J. CAMPION

11
12
13 By: [Signature]

Harvey C. Berger
Attorneys for Named Plaintiff JUSTIN
OPYRCHAL, individually, and on behalf of
all other similarly situated current and
former employees of Defendants in the State
of California

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17 **DEMAND FOR JURY TRIAL**

18 Named Plaintiff JUSTIN OPYRCHAL, individually, and on behalf of all
19 other similarly situated current and former employees of Defendants in the State of
20 California, hereby demands a jury trial.

21
22 Dated: 5/9/07

POPE, BERGER & WILLIAMS, LLP,
LAW OFFICES OF DOUGLAS J. CAMPION

23
24 By: [Signature]

Harvey C. Berger
Attorneys for Named Plaintiff JUSTIN
OPYRCHAL, individually, and on behalf of
all other similarly situated current and
former employees of Defendants in the State
of California